THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION Nos. 14414 of 2006, 14583 of 2006, 14596 of 2006, 14616 of 2006, 14634 of 2006, 14895 of 2006,
14941 of 2006, 14894 of 2006, 13435 of 2006 and 14593 of 2006

DATED _____.12.2007

1)W.P. No.14414 of 2006:

Between:

The Director of Health, Andhra Pradesh, Hyderabad & another

…Petitioners

and

P.Ramulu & 3 others

…Respondents

2)W.P. No. 14583 of 2006:

Between:

The Director of Health, Andhra Pradesh, Hyderabad & 2 others … Petitioners

and

M.Sreedhar & another

…Respondents

3)W.P. No.14596 of 2006:

Between:

The Director of Health, Andhra Pradesh,
Hyderabad & 2 others …Petitioners
and

M.Hanumanth Reddy …
Respondent

4)W.P. No.14616 of 2006:

Between:
The Director of Health, Andhra Pradesh,
Hyderabad & 2 others …
Petitioners
and

G.Nanda Kishore …
Respondent

5)W.P. No.14634 of 2006:

Between:
The Government of Andhra Pradesh, rep. by
its Principal Secretary to Government, Health, Medical
And Family Welfare Department, Secretariat,
Hyderabad & 2 others
…
Petitioners
and

T.Ramesh Kumar & 2 others …
Respondents

6)W.P. No.14895 of 2006:

Between:
The Government of Andhra Pradesh, rep. by
Its Principal Secretary to Government, Health, Medical

And Family Welfare Department, Secretariat,
Hyderabad & 2 others … Petitioners

and

I.Pramod Kumar … Respondent

7)W.P. No.14941 of 2006:

Between:
The Government of Andhra Pradesh, rep. by
Its Principal Secretary to Government, Health, Medical
And Family Welfare Department, Secretariat,
Hyderabad & 2 others …Petitioners

and

P.Ramnath & 2 others … Respondents

8)W.P. No.14894 of 2006:

Between:

The Government of Andhra Pradesh, rep. by
Its Principal Secretary to Government, Health, Medical
And Family Welfare Department, Secretariat,
Hyderabad & 2 others
… Petitioners

and

P.Venkateshgoud & 2 others … Respondents

9)W.P. No. 13435 of 2006:

Between:

The Director of Health, Andhra Pradesh,
Hyderabad & 2 others

…Petitioners

and

Y.Venkateswarlu & another

…Respondents

10)W.P. No. 14593 of 2006:

Between:

The Director of Health, Andhra Pradesh,
Hyderabad & another

…Petitioners

and

M.Shyam Sunder & 3 others

…Respondents

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION Nos. 14414 of 2006, 14583 of 2006, 14596 of 2006, 14616 of 2006, 14634 of 2006, 14895 of 2006,
14941 of 2006, 14894 of 2006, 13435 of 2006 and 14593 of 2006

COMMON ORDER: **(per the HON'BLE SRI JUSTICE K.C.BHANU)**

1. Common question arises in all these Writ Petitions and therefore, they are being disposed of by this Common Order.

2. The brief facts that are necessary for disposal of these Writ Petitions may be stated as follows:

The Government of Andhra Pradesh accorded permission to the Director of Medical Education, Andhra Pradesh, Hyderabad for filling up of posts of Multi Purpose Health Assistants (Male) [for short, 'MPHA (Male)'] through G.O. Rt. No.887, dated 18.05.1999. The issue in these Writ Petitions is with regard to filling up of the said posts in Mahaboobnagar district, wherein 55 vacancies were notified by prescribing certain qualifications. The selection has taken place and selected list of 40 members has been published on 6.11.1999. Out of the 40 candidates, 26 persons were appointed through proceedings dated 11.11.1999. Thereafter, 11 more candidates were appointed through proceedings dated 28.03.2001. As per the orders of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') dated 01.08.2001 in O.A. Nos. 3265 of 1999 and batch, the Government also accorded permission to appoint 18 more candidates, who have come up for selection in existing vacancies. Thus, in all, all the 55 vacancies, which were notified, have been filled up i.e. 26 persons through proceedings dated 11.11.1999, 11 persons through proceedings dated 28.03.2001 and 18 persons through proceedings dated 05.12.2001.

3. The appointment of persons, who secured educational

qualification in government institutions, and non-selection of persons who have obtained the qualification in private institutions, was the subject matter of O.A. No.3265 of 1999 and batch, wherein the Tribunal directed the respondents therein to consider the cases of all the persons who were selected and who have secured highest marks, in the existing vacancies, irrespective of their obtaining the qualification either from private institutions or government institutions.

4. Some of the candidates filed O.A. Nos. 5653 of 2002, 3426 of 2002, 4529 of 2002, 4566 of 2002 (hereinafter referred to as 'the first batch of applications') seeking a direction to set aside the proceedings dated 18.03.2002, 23.04.2002 and 04.05.2002 issued by the District Medical & Health Officer, Mahaboobnagar as illegal and arbitrary on the ground that those applicants secured more marks than the selected candidates. Their contention is that they were fully eligible and qualified to be appointed as MPHA (Male) having obtained certificates from various institutions which are recognized by the Government of Andhra Pradesh; that they were denied appointments on the ground that they obtained the qualification from the institutions which were not recognized, and that the persons, who secured lesser marks, were appointed on the ground that they obtained diploma certificate from recognized government institutions.

5. The respondents filed their counter in the O.As. *inter alia* admitting issuance of notification on 08.06.1999 for recruitment of para-medical staff, which includes

MPHA(Male). It is further stated that the candidates who have obtained the requisite qualifications from the private institutions were not allowed to appear for the examination for filling up of those posts, but some of the candidates obtained interim directions to write the written examination. It is further stated that the case of the applicants could not be entertained as their names could not find place in the selection list or in the list of 55 vacancies which were filled up.

6. Basing on the material on record, the Tribunal, by its common order dated 10.03.2005, allowed the above O.As. with the following direction:

> "… the respondents are directed to consider the case of the applicants for appointment as MPHA(M). While doing so, the authorities should look into the fact whether the applicants secured more marks than the 20 candidates who were appointed having studied in Private Institutions. If the applicants secured lesser marks than those 20 candidates, then the case of the applicants need not be considered and if the applicants secured higher marks they should be considered for appointment and necessary orders should be passed within a period of six weeks from the date of receipt of a copy of this order."

7. In respect of the first batch of applications, the learned Special Government Pleader contended that it is not in dispute that all the notified vacancies were filled up, and there were no vacancies to be thrown upon to the aspirants from the said notification; that the vacancies notified cannot be enlarged beyond the figure already notified; that thereafter, the Government decided to fill up the existing

vacancies on contract basis; that the persons who were appointed securing lesser marks than the applicants were not added as necessary parties and there was no challenge to the selection process and the appointments made thereunder. Hence, he prayed to set aside the impugned common order of the Tribunal.

8. In respect of Writ Petition Nos. 14593 of 2006 and batch, it is contended by the learned Special Government Pleader that the O.As. are clearly barred by limitation and the applicants therein have not come to the court within the period of one year and they have not filed any application to condone the delay; that the fate of the respondents in these Writ Petitions would depend upon the decision that may be rendered in Writ Petition Nos. 14634 of 2006 and batch.

9. On the other hand, the learned counsel appearing for the respondents in all the matters contended that the respondents have secured more marks than those persons who were appointed in the second list, and therefore the respondents are put to loss, and injustice is caused to them because the appointed persons secured lesser marks than the respondents; that though the respondents made representations to the Government to consider their cases, the same have not been considered and so the respondents had no other go, but to approach the Tribunal for redressal of their grievance. It is further contended that merit should be the criterion for making appointments and when the merit has not been considered by the concerned authorities, then it can be said to be discrimination; that after considering the material on record, the Tribunal rightly allowed the O.As., and

that as there is no error apparent on the face of the record, the question of exercising jurisdiction under Article 226 of the Constitution of India does not arise. Hence, he prayed to dismiss the Writ Petitions.

10. There cannot be any dispute that the Court issuing a writ of *Certiorari* acts in a supervisory and not appellate jurisdiction. Whenever any body of persons (a) having legal authority, (b) to determine questions affecting rights of subjects; (c) having the duty to act judicially, (d) act in excess of their legal authority, *certiorari* may be issued to quash a decision that goes beyond jurisdiction.

Further, even where the Tribunal has acted within its jurisdiction, *certiorari* will lie in the following cases of complete failure of justice.

(a) where the order of the Tribunal has been obtained by fraud, collusion or corruption;

(b) where the Tribunal has acted contrary to the principles of natural justice;

(c) where there is an error apparent on the face of the record;

(d) where the Tribunal's conclusion is based on no evidence whatever;

(e) where the decision of the Tribunal is vitiated by an error of law apparent on the face of the record, as distinguished from an error of fact.

11. Bearing the above principles in mind, now it has to be seen whether the Tribunal acted within its jurisdiction to decide the issue or it has acted in excess of its jurisdiction ?

12. In the first batch of applications, the proceedings dated 18.03.2002, 23.04.2002 and 04.05.2002 issued by the District Medical & Health Officer, Mahaboobnagar, are under

challenge. There is no dispute that originally the Government of Andhra Pradesh accorded permission to the Director of Medical Education, Andhra Pradesh, to fill up 55 vacancies of para-medical staff viz. MPHA(Male), in Mahaboobnagar district. It is also not in dispute that the qualification required for the said post is one year MPHA training course from an institution recognized by the Government of Andhra Pradesh. However, some of the candidates, who obtained certificates from the institutions, which are not recognized by the Government of Andhra Pradesh, have approached the Tribunal and obtained interim orders to permit them to participate in the selection process. The Government also issued a memo stating that the candidates, who have obtained their certificates from unrecognized institutions, need not be considered for appointments. But, ultimately, the said issue has been set at rest by the Tribunal by its order dated 01.08.2001 in O.A.No.3265 of 1999 & batch and directed the respondents therein to consider all the persons who were selected and who have secured higher marks irrespective of their obtaining qualifications i.e. either from private or government institutions, in the existing vacancies. The respondents herein are claiming that they have secured more marks than the persons who were appointed. They made representations to the Government ventilating their grievances. But, the same was rejected by the impugned proceedings dated 18.03.2002 stating that they were not included in the selection list, while setting out reasons for

appointment of 26 persons at one point of time, 11 persons at other point of time and 18 persons at another point of time. The petitioners herein did not even deny that the respondents herein did not secure more marks than the candidates who were selected and appointed. On that premise, the Tribunal gave a finding, which reads as under:

> ".. But the fact remains, which is undisputed, that the applicants seems to have secured more marks than those persons who were appointed in the selection list. …"

13. Further more, the applicants in the first batch of applications viz. O.A. Nos. 5653 of 2002, 3426 of 2002, 4529 of 2002, 4566 of 2002, have not challenged the selection process. No doubt, incidentally they have stated that some of the selected candidates secured less marks than the applicants. It is not the case of the applicants in the first batch of applications that they should be appointed within the notified 55 vacancies by taking into merit as consideration and selection of those candidates, who secured less marks than the applicants and appointed, should be cancelled. It is also not in dispute that the candidates allegedly secured lesser marks than the candidates who were appointed, were not impleaded as party-respondents in any one of the first batch of applications. Therefore, the question of appointing these applicants in the notified 55 vacancies does not arise.

14. The learned Special Government Pleader placed a strong reliance on a decision in *Rajesh Kumar Daria v. Rajasthan Public Service Commission & others*[1] wherein it

is held as follows:

> "… On completion of the selection process, 97 candidates were appointed in the year 2002 and have been serving as judicial officers for more than five years. There has also been a subsequent selection and appointments in the year 2005. Further all the selected candidates are not impleaded as parties. Even from among the original ten writ petitioners, only seven are before us. On the facts and circumstances, we do not propose to disturb the selection list dated 30.12.2001 or interfere with the appointments already made in pursuance of it. .."

15. In another decision in *Sandeep Singh v. State of Haryana & another*,[2] relied on by the learned Special Government Pleader, it is held as follows:

> "… That apart, even on first principle, it appears to us to commend that the vacancies available in any particular service till the date of interview at least should be filled up from the very same examination unless there is any statutory embargo for the same. In the case on hand, no statutory embargo has been pointed out to us. .."

16. In another decision in *State of U.P. & others v. Rajkumar Sharma & others*[3], the Apex Court held as follows: (para 13)

> "Filling up of vacancies over and above the number of vacancies advertised would be violative of fundamental rights granted under Articles 14 and 16 of the Constitution. (See *Union of India v. Ishwar Singh Khatri* (1992 Supp. (3) SCC 84); *Gujarat State Dy. Executive Engineers' Assn. V. State of Gujarat* (1994 Supp. (2) SCC 591); *State of Bihar v. Secretariat Asstt. Successful Examinees Union, 1986* [(1994) 1 SCC 126]; *Prem Singh v. Haryana SEB* [(1996) 4 SCC 319]; *Surinder Singh v. State of Punjab* [(1997) 8 SCC 488]; and *Kamlesh Kumar Sharma v. Yogesh Kumar Gupta* [(1998) 3 SCC 45]."

17. From the above decisions, it is clear that only notified vacancies should be filled up and filling up of vacancies, which are not notified, would be violative of fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. It is not in dispute before this Court that, in the case on hand, all the 55 notified vacancies were filled in under 3 spells, last spell of candidates being appointed by proceedings dated 05.12.2001 by the Government.

18. The direction given by the Tribunal is that the applicants in the O.As., if secured higher marks than the appointed candidates, their cases should be considered for appointment. Having given a finding that notified posts were already filled up, the Tribunal ought not to have given such a direction. So, the question of considering the cases of the applicants for appointment as MPHA (Male) does not arise because by the time they approached the Tribunal, all the notified posts were already filled up. None of the selected candidates was a party-respondent to the first batch of applications. No doubt, the Court can mould the relief for doing a substantial justice to the parties. On the ground that the applicants in the first batch of applications secured higher marks, the same cannot be given effect to the applicants because it would, at this stage, affect the right accrued to the candidates who were already appointed. So, in the absence of any challenge to the selection process, such an exercise cannot be done even by the Tribunal.

19. We are unable to accept the contention of the learned

counsel for the respondents herein that the respondents, who secured higher marks than the selected candidates, are to be appointed within the notified posts, for the simple reasons, firstly, that the selection process is not under challenge and secondly that the selected candidates who were subsequently appointed, were not impleaded as parties in any one of the first batch of the applications. Therefore, the order of the Tribunal in the first batch of applications is vitiated by the error of law apparent on the face of record calling for interference by this Court.

20. Nearly, after lapse of 6 years, some of the candidates filed O.A.Nos. 1041 of 2005, 4501 of 2005, 5232 of 2005, 5562 of 2005, 5625 of 2005 and 5894 of 2005 (hereinafter referred to as 'the second batch of applications'). The prayer sought for in these O.As. is to declare the action of the respondents in not considering the cases of applicants therein for appointment as MPHA(Male) though they are more meritorious than several selected persons and also not considering their cases on par with similarly placed persons by extending the benefit of the orders dated 10.03.2005 in O.A. No.5653 of 2002 & batch in favour of the applicants, as illegal, arbitrary, discriminatory and for consequential direction to appoint them as MPHA (Male). The Tribunal allowed the O.As. in terms of the orders in O.A. No.5653 of 2002 & batch, dated 10.03.2005 and the consequential corrigendum issued on 11.3.2005 directing the office to enclose a copy of the orders in the said O.A and the corrigendum.

21. On two grounds, the case of applicants in the second

batch of applications need not be considered. Firstly, on the ground of delay and lapses, and secondly that the order of the Tribunal in the second batch of applications is based upon the judgment in O.A. Nos. 5653 of 2002 & batch dated 10.03.2005 which is set aside as discussed supra.

22. With regard to lapses, sub-section (2) of Section 20 of the Administrative Tribunals Act, 1985, reads as follows:

> "For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances-
> (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance.
> (b)…"

Section 21 of the Act, prescribes limitation in that behalf. Sub-section (1)(a) thereof reads as follows:

> "A Tribunal shall not admit an application, -
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;"

23. It is not the case of applicants in the second batch of applications that they made applications for condonation of the delay and the Tribunal rejected the application without examining the grounds for delay occasioned by them.

24. In this context, the learned Special Government Pleader relied on a decision in *Ramesh Chand Sharma v. Udham Singh Kamal & others*[4] wherein it is held as follows:

> "… It was open to the first respondent to make proper

> application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. .."

25. The applicants have not approached the Tribunal within one year from the date of last appointments made in pursuance of the selection process i.e. 05.12.2001. A vague averment is made by the applicants in second batch of applications that they made representations to the Government and their representations have not been considered by the Government. There is no factual foundation as to on what date they made the representations and on what dates their representations were rejected. It is not their case that they were not aware of the appointments that were made in pursuance of the 1999 selection process. On the other hand, they have specifically stated to the effect that as per the Government Memo dated 13.3.2000, 20 persons were appointed. Therefore, the applicants in the second batch of applications were fully aware of the appointments that were made in pursuance of the selection process. Further more, in some of the O.As., the order is to consider the cases of the applicants for appointment as MPHAs in the existing vacancies, which is clearly vitiated by error of law apparent on the face of record.

26. Considering the fact that the Writ Petitions filed challenging the common order dated 10.03.2005 in the first

batch of applications in O.A. Nos. 5653 of 2002 & batch, are allowed setting aside the impugned common order of the Tribunal, the orders passed by the Tribunal in the second batch of applications basing on the said common order in the first batch of applications, would also liable to be set aside.

27. Accordingly, the Writ Petitions are allowed setting aside the impugned orders therein passed by the Tribunal, in the circumstances, no costs.

_____

JUSTICE D.S.R.VARMA

_____

JUSTICE K.C.BHANU

.12.2007

DRK

---

[1] (2007) 8 Supreme Court Cases 785

[2] (2002) 10 Supreme Court Cases 549

[3] (2006) 3 Supreme Court Cases 330

[4] (1999) 8 Supreme Court Cases 304